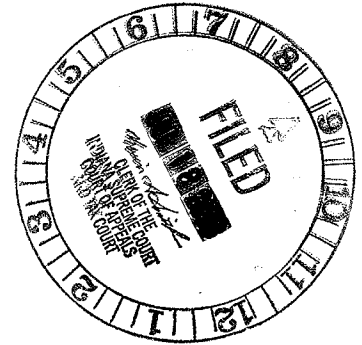


**In the
Indiana Supreme Court**



Jerry Joe FUENTES,)	Supreme Court Cause
)	No. 79S00-0804-SJ-165
(Petitioner below),)	
v.)	
)	
STATE OF INDIANA,)	Tippecanoe Circuit Court Cause
)	No. 79C01-0503-MR-00002
(Respondent below).)	

ORDER

The case below is pending in the trial court on a petition for post-conviction relief filed by Jerry Joe Fuentes (“Petitioner”). On March 25, 2008, the special judge presiding, the Honorable Donald L. Daniel, granted Petitioner’s motion for change of judge. On April 1, 2008, Judge Daniel requested that this Court appoint a successor special judge.

On April 30, 2008, this Court issued an order remanding to Judge Daniel and instructing him to either (1) make an appointment of a special judge pursuant to Indiana Criminal Rule 13(C), or (2) establish particular circumstances warranting an appointment by this Court and recertify the matter to this Court. Rather than implement either alternative, Judge Daniel issued an order on May 27, 2008, rescinding his earlier change-of-judge order.

Petitioner then filed in this Court a “Verified Petition for Issuance of Writ to Enforce Remand Order,” alleging that the trial court has not complied with the remand order and should be compelled to comply with one of the remand order’s two alternatives. The State, by a Chief Deputy Prosecuting Attorney, responded by arguing that Judge Daniel satisfactorily complied with the remand order. Judge Daniel issued an order, a copy of which has been filed with this Court, stating the remand order does not prohibit him from rescinding his change-of-judge order. Petitioner then filed a “Motion for Leave to File Response to Order” and a “Verified Emergency Motion for Stay” pending this Court’s resolution of this matter.

The Court GRANTS Petitioner's motion for leave to file a response and directs the Clerk to show Petitioner's response filed as of its date of tender, July 14, 2008.

The four participating Justices have had an opportunity to review the filed papers and express their views on this matter. Concluding that this Court's remand order does not allow Judge Daniel to rescind his change-of-judge order, the Court GRANTS, in part, the writ sought by Petitioner, as explained below.

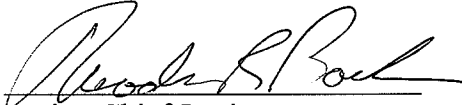
In the event of recusal, Criminal Rule 13(C) calls for assignment pursuant to a local rule. The rule also provides that in counties like Tippecanoe, where four or more judges receive assignment of criminal cases, a successor judge is assigned in the same manner as the initial judge. The Tippecanoe Local Rule provides for random assignment by the clerk both in the initial assignment and in the event of a recusal. Judge Daniel's May 27, 2008 order provides insight as to why he may have been believed that Criminal Rule 13(C) could not be used to appoint a special judge in this case and that this Court should appoint the successor special judge. Specifically, the order states that among those who might ordinarily be selected special judge under Criminal Rule 13(C), Judge Donald C. Johnson had already recused. Judge Gregory J. Donat would be subject to the same claim of recusal as Judge Daniel because both have publicly endorsed the judicial candidacy of an attorney's whose effectiveness is challenged in the petition for post-conviction relief. Finally, the parties had struck Judge Thomas H. Busch and Judge Les A. Meade from the panel that produced Judge Daniel's appointment as special judge. However, Judge Busch and Judge Meade are not ineligible to serve merely because they appeared on and were struck from that panel. The explanation for failure to implement Criminal Rule 13(C) is therefore erroneous.

Accordingly, this Court ORDERS Judge Daniel to refrain from exercising jurisdiction over the case below, except that he shall promptly refer the case to the clerk of the Tippecanoe Circuit Court, and then the successor special judge shall be selected by the clerk by random assignment of the case to an eligible judge.

Given this disposition, Petitioner's "Verified Emergency Motion for Stay" is moot. Assuming the hearing in the trial court remains scheduled for July 28, 2008, as the filed papers indicate, whether to conduct the hearing on that date or on some other will be a matter for the new special judge.

The Clerk is directed to send copies of this order to the Honorable Donald L. Daniel, Special Judge, Tippecanoe Circuit Court, Courthouse, 301 Main Street, Lafayette, IN 47901; Linda Phillips, Clerk of Courts for Tippecanoe County, P.O. Box 1665, Lafayette, IN 47902; Vickie Yaser, Deputy Public Defender, One North Capitol, Suite 800, Indianapolis, IN 46204; Kristen E. McVey, Chief Deputy Prosecuting Attorney, Courthouse, 301 Main Street, Lafayette, IN 47901; and Steve Carter, Indiana Attorney General.

Done at Indianapolis, Indiana, this 18th day of July, 2008.


Acting Chief Justice

Shepard, C.J., and Dickson, Boehm and Rucker, JJ., concur.
Sullivan, J., is not participating.